

REMARKS:

Claims 10-53 remain pending in this application.

35 U.S.C. § 102 Rejections:

Claims 10-28, 30-31, 34-38, 41, 43, 45-50, and 52-53 were rejected under 35 U.S.C. § 102(e) as being anticipated by Miura. Applicant respectfully traverses this rejection.

The cited reference fails to teach or suggest all of the elements of the independent claims. The teachings of Miura were presented in the previous office action response.

Claims 10-20, 34, 36-38, 41, 43, 45-50 and 52-53:

In response to Applicant's argument that Miura does not teach or suggest "monitoring one or more attributes of the incoming sound," the Examiner "maintains his stand." *See* Office Action at 2 (citing paragraphs [0038], [0061], and [0100] of Miura). Applicant continues to disagree. Applicant notes that Miura relates to the processing of "RF signals." Miura at [0038]. Applicant submits that "RF signals" do not constitute "incoming sound" as recited in claim 10. **The distinction between an "RF signal" on one hand and sound on the other is a matter of basic physics.**

For at least the reasons given above, the features discussed above are not taught or suggested by Miura, either in the above citations or elsewhere. Accordingly, removal of the § 102 rejection of claims 10-20, 34, 36-38, 41, 43, 45-50 and 52-53 is respectfully requested for at least these reasons.

Claims 21-28 and 30-31:

Independent claim 21 recites, in pertinent part:

“A method of sound-activated transfer of incoming sound, the method comprising: ... determining a first plurality of intervals **within** the segments of effective **sound** absence, each interval immediately preceding one of the segments of **sound**, each interval being part of and associated with a segment of effective sound absence, the plurality of intervals comprising at least one interval **shorter** than a segment of effective sound absence associated with said at least one interval; and transferring the first plurality of intervals” (Emphasis added).

Independent claim 28 recites a combination of features that includes limitations similar to those highlighted above.

Applicant previously argued that Miura does not teach or suggest “a [] plurality of intervals within the segments of effective sound absence.” The Examiner responded to this argument in two ways. First, the Examiner appeared to argue that his prior position was justified because Applicant had “fail[ed] to clearly disclose in the specification the advantages of the above limitations, the Examiner maintains his stand.” *See* Office Action at 2. Second, the Examiner stated that Miura discloses “receiving continuous empty packages which are associated to the errors in the music....” *Id.*

As an initial matter, Applicant submits that the Examiner is injecting an extraneous limitation into the test for anticipation by requiring the disclosure of advantages of a particular claim. The Court of Customs and Patent Appeals, one of the predecessor courts of the Federal Circuit, has addressed this point directly in *In re Ratti*, 270 F.2d 810, 814 (CCPA 1959): “While it is true that proof that an invention is better or does possess advantages may be persuasive of the existence of any one or all of the foregoing three requirements [sections 101, 102, and 103], and hence be indicative of patentability, Congress has not seen fit to make such proof a

prerequisite to patentability.” Accordingly, the Examiner has committed a fundamental legal error in making this requirement.¹

As noted in the previous office action response, the Examiner contends that Miura teaches the portion of claim 21 highlighted above in Figures 7A and 7B of that reference, along with paragraphs [0074] and [0075]. However, as noted in the previous office action response, nowhere in Miura, including Figures 7A and 7B and paragraphs [0074] and [0075], is there any teaching or suggestion of “determining a first plurality of intervals within the segments of effective sound absence,” nor is there any teaching or suggestion wherein “the plurality of intervals [comprise] at least one interval shorter than a segment of effective sound absence” (emphasis added). Instead, paragraphs [0074] and [0075] are directed to the transfer of music in a certain order in a recorder/reproducing apparatus, while Figures 7A and 7B are similarly directed to illustrating an order in which music is transferred in a recording apparatus. Applicant further submits that claim 21 is patentably distinct over the cited reference for reasons similar to those given above in support of claim 10.

For at least the reasons stated above, claim 21 is patentably distinct over Miura. Applicant further submits that claim 21’s dependent claims are patentably distinct over Miura at least by virtue of their dependence on claim 21. Independent claim 28 and its associated dependent claims are also patentably distinct over Miura for at least reasons similar to those provided in support of claim 21.

35 U.S.C. § 103 Rejections:

Claim 32 recites features similar to those discussed above with reference to claims 21 and 28. As the Examiner relies on Miura as the primary reference in the rejection of claim 32, Applicant thus submits that for at least these reasons provided in support of claims 21 and 28, Miura in view of Collier fails to teach or suggest all of the elements of claim 32. Applicant further maintains that the Examiner erred in stating that Applicant “[failed] to clearly disclose in the specification the advantages of the above limitations,” for the reasons noted above.

Applicant further argued that claim 32 is patentably distinct over the cited art because

¹ This is not to say, of course, that Applicant’s claims do not have any advantages vis-à-vis prior art.

neither of these references, either singly or in combination, teaches or suggests a “transmitter [] transmit[ting], via the antenna,” as is recited in claim 32. In response, the Examiner takes Official Notice regarding the limitation of the use of an antenna to transmit sound segment levels, and contends that the concepts and advantages of using an antenna to transmit data are well known in the art. Applicant respectfully disagrees with the Examiner’s taking of Official Notice and his use thereof to support the obviousness rejection. For example, in many applications, the use of an antenna for data transmission would be disadvantageous in comparison to a wired data transmission, as wireless data transmissions from an antenna may be more susceptible to electromagnetic interference than wired transmissions over certain types of wired media.

For at least these reasons, Applicant submits that a *prima facie* case of obviousness has not been established with regard to claims 32-33. Accordingly, removal of the 35 U.S.C. § 103(a) rejections is respectfully requested.

With respect to the remaining claims subject to the 35 U.S.C. § 103(a) rejection, Applicant notes that each of these claims depends from one of the independent claims discussed above with regard to the § 102 rejections. Applicant further notes that Miura is the primary reference for each of the § 103 rejections. Accordingly, for at least the reasons given above, Applicant submits that Miura in view of Collier fails to teach or suggest all of the elements of these claims. Removal of the § 103 rejections thereof is respectfully requested.

CONCLUSION:

Applicant respectfully submits the application is in condition for allowance, and an early notice to that effect is requested.

If any extension of time (under 37 C.F.R. § 1.136) is necessary to prevent the above-referenced application from becoming abandoned, Applicant hereby petitions for such extension.

The Commissioner is authorized to charge any fees that may be required, or credit any overpayment, to Meyertons, Hood, Kivlin, Kowert & Goetzel, P.C. Deposit Account No. 501505/6057-27400/EAH.

Respectfully submitted,

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